



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/526,329

09/28/2005

Adedamola Adebayo Andu

AANDU.0101

7071

7590
Carstens & Cahoon
PO Box 802334
Dallas, TX 75380

05/23/2008

EXAMINER

HAYES, KRISTEN C

ART UNIT

PAPER NUMBER

3643

MAIL DATE

DELIVERY MODE

05/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/526,329	Applicant(s) ANDU, ADEDAMOLA ADEBAVO	
	Examiner Kristen C. Hayes	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20050228, 20060425</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 02/28/2005 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because there is not translation of FR 2809588. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lid (claim 20); the combination of the plant pot with further storage chambers (Claims 19-28), a sump, a pressure relieving tube; and the storage chamber having a capillary plug; must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views

Art Unit: 3643

of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 921. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: "duct 11A" and "capillary plug 11D" (page 7: lines 1, 2). Reference number 11 is previously disclosed as being a tube. Different reference numbers should be used to describe the duct and capillary plug.

5. The disclosure is objected to because of the following informalities: "float 912" (page 9: line 10). Reference number 912 is previously disclosed as slit.

Art Unit: 3643

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the storage chamber having a capillary plug is not mentioned in the specification.

Appropriate correction is required.

Claim Objections

7. Claim 23 is objected to because it claims a storage chamber. It is not known if this storage chamber is an additional storage chamber or one of the storage chambers in claim 1

8. Claims 12-22 refer to canceled claims. For purposes of examination the examiner assumes that reference to claim 1 should be claim 11, claim 7 should be 15 and claim 9 should be 17.

9. Claims 19-28 recite the limitation of a plant pot according to previous claims. These claims appear to be independent claims and have been treated as such.

10. Claim 24 recites the limitation of the control tube and breather tube being a part of the inner pot. The control and breather tubes appear to be in the space between the inner and outer pots.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 11-18, 23, 23-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3643

13. Claims 11, 29 and 30 claim a second delivery tube. It is not known if this tube is an additional tube or the same tube claimed in part (ii).

14. Claims 13, 14, 16 recite limitations to the storage chamber. There are several storage chambers claimed. It is unclear which storage chamber the claims refer to.

15. Claim 18 recites the limitation "the float member" in line 1. There is insufficient antecedent basis for this limitation in the claim.

16. Claims 23-28 recite the limitation "the inner pot". There is insufficient antecedent basis for this limitation in the claim.

17. Claim 26 recites the limitation "the top part of the inner pot" in lines 3-4. There is insufficient antecedent basis for this limitation in the claim.

18. Claim 27 recites the limitation "the control tube" in line 2. There is insufficient antecedent basis for this limitation in the claim.

19. Claim 28 recites the limitation "the outer pot" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

20. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3643

21. Claims 11-16, 19, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Andu US 6,131,333.

22. Regarding claims 11, 19, 29 and 30 Andu discloses a plant pot with a self-watering apparatus comprising a moisture sensitive valve (5) molded in one piece (Andu, abstract) and a water holding comprising a filling tube (10) with an opening at a high level (Andu, column 2: lines 65-66), said tube being in fluid communication with a delivery tube (15) located at a low level, a main water holding reservoir (9), said main water holding reservoir being in fluid communication with a second delivery tube (13) a storage chamber (8) having a discharge orifice (through 19), a further storage chamber (18) having further discharge orifices, the further storage chamber being in fluid communication with the storage chamber and a pressure relieving tube (14), an outlet tube (11) with an opening (17) at a high-level within the main water holding reservoir.

23. Regarding claim 12, Andu further discloses the storage chamber having a capillary plug (5 via connection of 11) as best understood.

24. Regarding claim 13, Andu further discloses the pressure relieving tube connecting the reservoir at a high level to the storage chamber at a low lever (Andu, Figure 2).

25. Regarding claim 14, Andu further discloses the discharge orifice of the storage camber being located above the bottom of the chamber and the pressure relieving tube being arranged to enter the chamber at a level below the discharge orifice (Andu, Figure 2).

26. Regarding claim 15, Andu further discloses the outlet tube being formed integrally with the water holding body (Andu, Figure 2).

27. Regarding claim 16, Andu further discloses the discharge orifice further comprising a bleed valve (19) located in a wall of the storage chamber.

Art Unit: 3643

28. Claims 11, 12 14, 17 and 21, 22-25 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Lai US 6,363,658.

29. Regarding claim 11, Lai discloses a self-watering apparatus comprising a moisture sensitive valve (Lai, abstract) and a water holding comprising a filling tube (H1) with an opening at a high level, said tube being in fluid communication with a delivery tube (near bottom of 10) located at a low level, a main water holding reservoir (H2), said main water holding reservoir being in fluid communication (210) with a second delivery tube (50) a storage chamber (32 formed by 30) having a discharge orifice (31, 33), a further storage chamber (32) (Lai, Figure 3) having further discharge orifices (33), the further storage chamber being in fluid communication with the storage chamber and the pressure relieving tube (seen as additional element 33 or 11, as best understood) and an outlet tube (11, 21) (Lai, column 3: lines 13-15) with an opening at a high-level within the main water holding reservoir (Lai, Figure 4).

30. Regarding claim 12, Lai further discloses the storage chamber having a capillary plug, in that the soil of Lai would enter the chamber of 33, acting as a capillary plug.

31. Regarding claim 14, Lai further discloses the discharge orifice (33) of the storage chamber being located above the bottom of the chamber and the pressure relieving tube (seen as additional element 33) being arranged to enter the chamber at a level below the discharge orifice (Lai, Figure 4).

32. Regarding claim 17, Lai further discloses the water holding body comprising a float member (52).

33. Regarding claim 21, Lai discloses a plant pot according to claim 17 wherein the walls of the plant pot are a continuous toroidal reservoir (Lai, Figure 3).

34. Regarding claim 22, Lai discloses a plant pot according to claim 17 wherein the plant pot comprising an outer (10) and inner (20) pot.

Art Unit: 3643

35. Regarding claim 23, Lai discloses a plant pot according to claim 12 wherein the inner pot comprising a storage chamber (32) and a cap (formed by the top surface of 30).

36. Regarding claim 24, Lai further discloses the inner pot comprising a breather tube (11).

37. Regarding claim 25, Lai discloses a plant pot according to claim 14 wherein the filler tube is located outside of the inner pot.

38. Regarding claim 27, Lai discloses a plant pot according to claim 14 wherein the inner pot comprises a hole (210) at the bottom wherein a control tube (50) with a capillary plug (51) forms a seal into the hole.

Claim Rejections - 35 USC § 103

39. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

40. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai US 6,363,658 in view of Shaw US 6,418,664.

41. Regarding claim 18, Lai discloses the device of claim 15 but does not disclose the float member being slidably engaged by guide portions. Shaw teaches a float member slidably engaged by guide portions integrally formed with the internal walls of the reservoir (Shaw, Figures 3A, 3B). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the float of Lai to include the guide portions of Shaw to provide an externally visible indicator of the water level of the apparatus.

42. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai US 6,363,658 in view of Bachman et al US 6,134,833.

Art Unit: 3643

43. Regarding claim 20, Lai discloses a plant pot according to claim 9. Not disclosed is the storage chamber having a sump. Bachman teaches a plant pot with a storage chamber comprising a sump (22) consisting of a lid (90) fitted to the base of the apparatus. Sumps are well known in the art as wells or pits, to collect, store, or filter water. It would have been obvious to one of ordinary skill in the art to modify the storage chamber of Lai with the sump of Bachman as a filter for the water (Bachman, column 4: line 42).

44. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai US 6,363,658.

45. Regarding claim 26, Lai discloses a plant pot according to claim 14 comprising a hole in a storage chamber of the inner pot wherein the breather tube (11) forms a seal with the hole. Not disclosed is the breather tube extending to the top part of the inner pot. However, the height of the breather tube would effect the maximum water level within the apparatus. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the breather tube of Lai so that it extended to the top of the inner pot depending on the desired maximum water level of the apparatus.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Hayes whose telephone number is 571-270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3643

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
16 May 2008

Peter Poon
Examiner
Art Unit 3643

/Peter M. Poon/
Supervisory Patent Examiner, Art Unit 3643